

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL SANCHEZ,

Defendant and Appellant.

B216950

(Los Angeles County
Super. Ct. No. NA078731)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Tomson T. Ong, Judge. Affirmed.

Janice Wellborn, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson and Robert David Breton, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Miguel Sanchez appeals from his conviction of second degree robbery and misdemeanor possession of marijuana, for which he was sentenced to life in prison under the “Three Strikes” law. (Pen. Code, § 667, subds. (b)-(i), § 1170.12, subds. (a)-(d).)¹ He contends: (1) denial of his motion to strike one of the two Three Strikes priors was an abuse of discretion and (2) the sentence constitutes cruel and unusual punishment. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because the issues on appeal involve sentencing only, a detailed recitation of the facts is unnecessary. Viewed in accordance with the usual rules on appeal (*People v. Zamudio* (2008) 43 Cal.4th 327, 357), the evidence established that in the late afternoon on June 17, 2008, defendant approached the passenger side window of the victim’s parked car, flashed what appeared to be a handgun in his waistband and demanded that the victim give him his money; fearful, the victim complied. Defendant fled in a vehicle. Later that night, police stopped a vehicle driven by defendant that matched the victim’s description of defendant’s car. Police found two toy handguns inside the car and a baggie of marijuana in defendant’s pocket. The victim identified defendant at the scene and identified one of the two toy guns as the “gun” he saw in defendant’s waistband.²

Defendant was charged with second degree robbery and possession of marijuana; prior convictions were alleged pursuant to the Three Strikes law, section 667, subdivision (a)(1) and section 667.5, subdivision (b). After a jury found defendant guilty on the substantive charges, he admitted the alleged priors. After denying defendant’s motion to strike one of the Three Strikes priors in the furtherance of justice, the trial court sentenced defendant to 37 years to life in prison, comprised of 25 years to life for second

¹ All further undesignated statutory references are to the Penal Code.

² Defendant denied robbing the victim. He testified that he and the victim engaged in a fist fight after the victim sexually assaulted the daughter of defendant’s friend outside of a pool hall. Defendant explained that the car he was driving belonged to his father and that the toy guns found in the car belonged to his young nieces.

degree robbery under the Three Strikes law, plus a consecutive 10 years pursuant to section 667, subdivision (a) (5 years for each of the two prior convictions), plus a consecutive 2 years pursuant to section 667.5, subdivision (b) (1 year for each of prior prison terms); sentence on the conviction for possession of marijuana was suspended.

Defendant filed a timely notice of appeal.³

DISCUSSION

A. *Denial of Defendant's Motion to Strike Was Not an Abuse of Discretion*

Defendant contends the trial court abused its discretion by denying defendant's motion to strike one or both Three Strikes priors. He argues that his background and the nature of the offense established that he did not fall within the spirit of the Three Strikes law sentencing scheme. We disagree.

Under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530, a defendant who is subject to a second or third strike may move the court to "strike" the prior conviction in the interests of justice. The decision rests in the trial court's discretion. In *People v. Williams* (1998) 17 Cal.4th 148, 161, our Supreme Court explained that in exercising its discretion, the trial court must determine whether "in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies."

To warrant reversal, there must be a showing that the trial court abused its discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 373-375.) In other words, the

³ The jury verdicts were returned on February 23, 2009. Pronouncement of judgment and sentence occurred on June 10, 2009, and the notice of appeal was filed that same day. Although the notice of appeal states that it is from the "judgment rendered against him on February 23, 2009," no judgment was entered that day. We deem the appeal to be from the judgment entered on June 10, 2009.

trial court's decision must be "so irrational or arbitrary that no reasonable person could agree with it." (*Id.* at p. 377.) The Three Strikes law creates a strong presumption that any sentence that conforms to the norms prescribed by the statute is both rational and proper but the sentencing norms established by the Three Strikes law may, as a matter of law, produce an arbitrary, capricious or patently absurd result under the specific facts of a particular case. (*Carmony*, at p. 377.)

Here, the record shows that defendant was a gang member and had a long history of substance abuse, beginning when he was 12 years old. He had failed to complete two drug treatment programs. Defendant left high school in the 10th grade, but later obtained an auto repair certificate from an occupational center. Defendant's probation report reflects that in September 1990, defendant was 19 years old when he was convicted of selling marijuana and placed on three years' probation. Less than two years later, defendant was sentenced to 120 days in jail for being under the influence of a controlled substance. A month after that, he was convicted of robbery and sentenced to five years in prison. In July 1996, when he was 25 years old, defendant was convicted of robbery again, and this time sentenced to nine years in prison. In December 2004, when he was 33 years old, defendant was convicted of taking a vehicle without the owner's consent and sentenced to four years in prison. Defendant was 37 years old when he committed the current offense. Although there was some mitigating evidence, the trial court was not required to credit it.

In his motion to strike one or both of the Three Strikes priors, defendant argued that the loss sustained in the current offense was minimal, no one was injured, and no gun was used. Furthermore, the prior robbery convictions were 12 and 16 years old. His final point was even if one or both Three Strikes priors were stricken he would still be exposed to a substantial prison sentence, including prior conviction enhancements other than under the Three Strikes law (18 years if both priors were struck and 23 years if just one was struck).

The trial court denied the motion for the following reasons: (1) both the current and prior offense were theft crimes; (2) a continuing pattern of criminality was

demonstrated by the fact that the prior convictions were not particularly old, defendant had not remained free from custody for any significant amount of time, and he had been unsuccessful on parole; (3) there was no indication that defendant would remain law abiding in the future; and (4) his current offense – robbery – and two of his priors, both robberies, showed common factual and legal characteristics.

We find no abuse of discretion in the trial court’s decision not to strike either of the Three Strikes priors. Defendant’s history of recidivism, and frequent criminal activity each time he has been released from prison, demonstrates that he is exactly the kind of recidivist from whom the Three Strikes law was intended to protect society.

B. *The Sentence Did Not Constitute Cruel and Unusual Punishment*

Defendant contends the 37 year-to-life sentence imposed on him constitutes cruel and unusual punishment under the United States and California Constitutions. He argues that, “[g]iven the rigors of prison, [defendant], who is now 38 years old, is unlikely to see his parole eligibility date. [Citation.] Thus, punishment such as this ‘makes a mockery of the law and amounts to cruel and unusual punishment,’ in violation of the United States and California Constitutions. [Citations.]” We disagree.

Under the Eighth Amendment to the United States Constitution, a sentence that is grossly disproportionate to the severity of the crime is cruel and unusual. (*People v. Meeks* (2004) 123 Cal.App.4th 695, 707.) In analyzing whether a sentence falls within the Eighth Amendment’s proscription, we consider three objective criteria: (1) the gravity of the offense and the harshness of the penalty; (2) the sentence imposed on other criminals in the same jurisdiction; and (3) the sentences imposed by other jurisdictions for the same offense. (*Meeks*, at p. 707.) “ ‘[I]t is only in the rare case where a comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality that the second and third criteria come into play.’ [Citations.]” (*People v. Haller* (2009) 174 Cal.App.4th 1080, 1088.)

Under the California Constitution, a sentence constitutes cruel or unusual punishment if it is so disproportionate to the crime that it shocks the conscience and

offends fundamental notions of human dignity. (Cal. Const., art. I, § 17.) Much like a claim under the federal Constitution, we consider three objective criteria in analyzing a claim under the California Constitution: “(1) an examination of the nature of the offense and the offender; (2) a comparison of the sentence with punishments for different offenses in the same jurisdiction; and (3) a comparison of the sentence with punishments for the same offense in other jurisdictions.” (*People v. Uecker* (2009) 172 Cal.App.4th 583, 600.)

Defendant does not contend his sentence was disproportionate under either of those tests. Instead, his argument focuses exclusively on the harshness of the penalty. But under the Three Strikes law, defendants are punished not just for their current offense, they are punished for their recidivism. (*People v. Cooper* (1996) 43 Cal.App.4th 815, 823 (*Cooper*).) In *Lockyer v. Andrade* (2003) 538 U.S. 63 (*Andrade*) and *Ewing v. California* (2003) 538 U.S. 11 (*Ewing*), the United States Supreme Court foreclosed constitutional challenges to life sentences under the Three Strikes law for even relatively minor offenses. (*Andrade*, at p. 77 [two consecutive 25 years-to-life terms for shoplifting less than \$200 in videotapes did not violate the Eighth Amendment]; *Ewing*, at pp. 30-31 [25 years to life for stealing three golf clubs did not violate the Eighth Amendment].) In *Ewing*, the court held: “When the California Legislature enacted the three strikes law, it made a judgment that protecting the public safety requires incapacitating criminals who have already been convicted of at least one serious or violent crime. Nothing in the Eighth Amendment prohibits California from making that choice.” (*Id.* at p. 25.) Similarly, in *Cooper, supra*, at pages 825-826, the court found a life sentence under the Three Strikes law for being a felon in possession of a handgun was not cruel or unusual under the California Constitution.

It follows that if the life terms in *Andrade*, *Ewing* and *Cooper* for relatively minor offenses pass federal constitutional muster, then 37 years to life for robbery is likewise not unconstitutional. Defendant’s contentions under both the federal and California Constitutions thus fail.

DISPOSITION

The judgment is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.